

1 state service credit for members who transferred from the
2 Teachers' Defined Contribution Retirement System; providing
3 that a nonteaching member shall not be considered absent from
4 service while serving as an officer with a statewide
5 professional teaching association; requiring that members make
6 written request to the retirement board to receive credit for
7 service previously credited by the Public Employees Retirement
8 System; providing that all interest paid or transferred on
9 service credit from the Public Employees Retirement System be
10 deposited in the reserve fund; providing that an inactive
11 member may elect to receive an annuity at age sixty; providing
12 that the sole primary beneficiary of a member is eligible for
13 an annuity if the contributor was fifty years old with twenty-
14 five years service; providing that a refund beneficiary shall
15 receive the contributor's accumulated contributions up to the
16 plan year of contributor's death; providing that a refund
17 beneficiary shall be paid the Teachers' Defined Contribution
18 Retirement System member contributions transferred plus the
19 vested portion of employer contributions and any earnings;
20 providing that an actively contributing member who is at least
21 sixty years of age is eligible for an annuity; providing that
22 any member who has thirty years of total service in the state
23 as a nonteaching member is eligible for an annuity; specifying
24 that anyone who becomes a new member on or after July 1, 2013,

1 shall have five or more years of actual contributory service
2 to qualify for retirement; providing that a nonteaching member
3 who is fifty- five years of age and has served thirty years in
4 the state is eligible for an annuity; providing that a
5 nonteaching member is eligible for disability benefits;
6 providing for the computation of a member's annuity; and
7 providing for the commencement date of disability annuity
8 benefits.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and
11 §18-7A-26 of the Code of West Virginia, 1931, as amended, be
12 amended and reenacted, and that said code be amended by adding
13 thereto a new section, designated §18-7A-14c, all to read as
14 follows:

15 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

16 **§18-7A-3. Definitions.**

17 As used in this article, unless the context clearly requires
18 a different meaning:

19 (1) "Accumulated contributions" means all deposits and all
20 deductions from the gross salary of a contributor plus regular
21 interest.

22 (2) "Accumulated net benefit" means the aggregate amount of
23 all benefits paid to or on behalf of a retired member.

24 (3) "Actuarially equivalent" or "of equal actuarial value"

1 means a benefit of equal value computed upon the basis of the
2 mortality table and interest rates as set and adopted by the
3 retirement board in accordance with the provisions of this article:
4 *Provided*, That when used in the context of compliance with the
5 federal maximum benefit requirements of Section 415 of the Internal
6 Revenue Code, "actuarially equivalent" shall be computed using the
7 mortality tables and interest rates required to comply with those
8 requirements.

9 (4) "Annuities" means the annual retirement payments for life
10 granted beneficiaries in accordance with this article.

11 (5) "Average final salary" means the average of the five
12 highest fiscal year salaries earned as a member within the last
13 fifteen fiscal years of total service credit, including military
14 service as provided in this article, or if total service is less
15 than fifteen years, the average annual salary for the period on
16 which contributions were made: *Provided*, That salaries for
17 determining benefits during any determination period may not exceed
18 the maximum compensation allowed as adjusted for cost of living in
19 accordance with section seven, article ten-d, chapter five of this
20 code and Section 401(a)(17) of the Internal Revenue Code.

21 (6) "Beneficiary" means the recipient of annuity payments made
22 under the retirement system.

23 (7) "Contributor" means a member of the retirement system who
24 has an account in the teachers accumulation fund.

1 (8) "Deposit" means a voluntary payment to his or her account
2 by a member.

3 (9) "Employer" means the agency of and within the state which
4 has employed or employs a member.

5 (10) "Employer error" means an omission, misrepresentation or
6 violation of relevant provisions of the West Virginia Code or of
7 the West Virginia Code of State Regulations or the relevant
8 provisions of both the West Virginia Code and of the West Virginia
9 Code of State Regulations by the participating public employer that
10 has resulted in an underpayment or overpayment of contributions
11 required. A deliberate act contrary to the provisions of this
12 section by a participating public employer does not constitute
13 employer error.

14 (11) "Employment term" means employment for at least ten
15 months, a month being defined as twenty employment days.

16 (12) "Gross salary" means the fixed annual or periodic cash
17 wages paid by a participating public employer to a member for
18 performing duties for the participating public employer for which
19 the member was hired. Gross salary shall be allocated and reported
20 in the fiscal year in which the work was done. Gross salary also
21 includes retroactive payments made to a member to correct a
22 clerical error, or made pursuant to a court order or final order of
23 an administrative agency charged with enforcing federal or state
24 law pertaining to the member's rights to employment or wages, with

1 all retroactive salary payments to be allocated to and considered
2 paid in the periods in which the work was or would have been done.
3 Gross salary does not include lump sum payments for bonuses, early
4 retirement incentives, severance pay or any other fringe benefit of
5 any kind including, but not limited to, transportation allowances,
6 automobiles or automobile allowances, or lump sum payments for
7 unused, accrued leave of any type or character.

8 (13) "Internal Revenue Code" means the Internal Revenue Code
9 of 1986, as it has been amended.

10 (14) "Member" means any person who has accumulated
11 contributions standing to his or her credit in the state Teachers
12 Retirement System. A member shall remain a member until the
13 benefits to which he or she is entitled under this article are paid
14 or forfeited, or until cessation of membership pursuant to section
15 thirteen of this article.

16 (15) "Members of the administrative staff of the public
17 schools" means deans of instruction, deans of men, deans of women,
18 and financial and administrative secretaries.

19 (16) "Members of the extension staff of the public schools"
20 means every agricultural agent, boys' and girls' club agent and
21 every member of the agricultural extension staff whose work is not
22 primarily stenographic, clerical or secretarial.

23 (17) "New entrant" means a teacher who is not a present
24 teacher.

1 (18) "Nonteaching member" means any person, except a teacher
2 member, who is regularly employed for full-time service by: (A) Any
3 county board of education; (B) the State Board of Education; (C)
4 the Higher Education Policy Commission; (D) the West Virginia
5 Council for Community and Technical College Education; or (E) a
6 governing board, as defined in section two, article one, chapter
7 eighteen-b of this code: *Provided*, That any person whose employment
8 with the Higher Education Policy Commission, the West Virginia
9 Council for Community and Technical College Education or a
10 governing board commences on or after July 1, 1991, is not
11 considered a nonteaching member.

12 (19) "Plan year" means the twelve-month period commencing on
13 July 1 and ending the following June 30 of any designated year.

14 (20) "Present member" means a present teacher or nonteacher
15 who is a member of the retirement system.

16 (21) "Present teacher" means any person who was a teacher
17 within the thirty-five years beginning July 1, 1934, and whose
18 membership in the retirement system is currently active.

19 (22) "Prior service" means all service as a teacher completed
20 prior to July 1, 1941, and all service of a present member who was
21 employed as a teacher, and did not contribute to a retirement
22 account because he or she was legally ineligible for membership
23 during the service.

24 (23) "Public schools" means all publicly supported schools,

1 including colleges and universities in this state.

2 (24) "Refund beneficiary" means the estate of a deceased
3 contributor or a person he or she has nominated as beneficiary of
4 his or her contributions by written designation duly executed and
5 filed with the retirement board.

6

7 (25) "Regular interest" means interest at four percent
8 compounded annually, or a higher earnable rate if set forth in the
9 formula established in legislative rules, series seven of the
10 Consolidated Public Retirement Board, 162 CSR 7.

11 (26) "Regularly employed for full-time service" means
12 employment in a regular position or job throughout the employment
13 term regardless of the number of hours worked or the method of pay.

14 (27) "Required beginning date" means April 1 of the calendar
15 year following the later of: (A) The calendar year in which the
16 member attains age seventy and one-half years; or (B) the calendar
17 year in which the member retires or ceases covered employment under
18 the system after having attained the age of seventy and one-half
19 years.

20 (28) "Retirant" means any member who commences an annuity
21 payable by the retirement system.

22 (29) "Retirement board" means the Consolidated Public
23 Retirement Board created pursuant to article ten-d, chapter five of
24 this code.

1 (30) "Retirement system" means the state Teachers Retirement
2 System established by this article.

3 (31) "Teacher member" means the following persons, if
4 regularly employed for full-time service: (A) Any person employed
5 for instructional service in the public schools of West Virginia;
6 (B) principals; (C) public school librarians; (D) superintendents
7 of schools and assistant county superintendents of schools; (E) any
8 county school attendance director holding a West Virginia teacher's
9 certificate; (F) members of the research, extension, administrative
10 or library staffs of the public schools; (G) the State
11 Superintendent of Schools, heads and assistant heads of the
12 divisions under his or her supervision, or any other employee under
13 the state superintendent performing services of an educational
14 nature; (H) employees of the State Board of Education who are
15 performing services of an educational nature; (I) any person
16 employed in a nonteaching capacity by the State Board of Education,
17 any county board of education, the State Department of Education or
18 the State Teachers Retirement Board, if that person was formerly
19 employed as a teacher in the public schools; (J) all classroom
20 teachers, principals and educational administrators in schools
21 under the supervision of the Division of Corrections, the Division
22 of Health or the Division of Human Services; (K) an employee of the
23 State Board of School Finance, if that person was formerly employed
24 as a teacher in the public schools; and (L) any person designated as

1 a 21st Century Learner Fellow pursuant to section eleven, article
2 three, chapter eighteen-a of this code who elects to remain a
3 member of the State Teachers Retirement System provided in this
4 article.

5 (32) "Total service" means all service as a teacher or
6 nonteacher while a member of the retirement system since last
7 becoming a member and, in addition thereto, credit for prior
8 service, if any.

9 Age in excess of seventy years shall be considered to be
10 seventy years.

11 **§18-7A-14. Contributions by members; contributions by employers;
12 correction of errors; forfeitures.**

13 (a) At the end of each month every member of the retirement
14 system shall contribute six percent of that member's monthly gross
15 salary to the retirement board: *Provided*, That any member employed
16 by a state institution of higher education shall contribute on the
17 member's full earnable compensation, unless otherwise provided in
18 section fourteen-a of this article. The sums are due the state
19 Teachers Retirement System at the end of each calendar month in
20 arrears and shall be paid not later than fifteen days following the
21 end of the calendar month. Each remittance shall be accompanied by
22 a detailed summary of the sums withheld from the compensation of
23 each member for that month on forms, either paper or electronic,
24 provided by the State Teachers Retirement System for that purpose.

1 (b) Annually, the contributions of each member shall be
2 credited to the member's account in the State Teachers Retirement
3 System Fund. The contributions shall be deducted from the salaries
4 of the members as prescribed in this section and every member shall
5 be considered to have given consent to the deductions. No
6 deductions, however, shall be made from the earnable compensation
7 of any member who retired because of age or service and then
8 resumed service unless as provided in section thirteen-a of this
9 article.

10 (c) The aggregate of employer contributions, due and payable
11 under this article, shall equal annually the total deductions from
12 the gross salary of members required by this section. Beginning
13 July 1, 1994, the rate shall be seven and one-half percent;
14 beginning on July 1, 1995, the rate shall be nine percent;
15 beginning on July 1, 1996, the rate shall be ten and one-half
16 percent; beginning on July 1, 1997, the rate shall be twelve
17 percent; beginning on July 1, 1998, the rate shall be thirteen and
18 one-half percent; and beginning on July 1, 1999, and thereafter,
19 the rate shall be fifteen percent: *Provided*, That the rate shall be
20 seven and one-half percent for any individual who becomes a member
21 of the State Teachers Retirement System for the first time on or
22 after July 1, 2005, or any individual who becomes a member of the
23 State Teachers Retirement System as a result of the voluntary
24 transfer contemplated in article seven-d of this chapter.

1 (d) Payment by an employer to a member of the sum specified in
2 the employment contract minus the amount of the employee's
3 deductions shall be considered to be a full discharge of the
4 employer's contractual obligation as to earnable compensation.

5 (e) Each contributor shall file with the retirement board or
6 with the employer to be forwarded to the retirement board an
7 enrollment form showing the contributor's date of birth and other
8 data needed by the retirement board.

9

10 (f) Notwithstanding any other provisions of this article,
11 forfeitures under the retirement system shall not be applied to
12 increase the benefits any member would otherwise receive under the
13 retirement system.

14 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

15 (a) General rule: If any change or employer error in the
16 records of any employer or the retirement system results in any
17 member, retirant or beneficiary receiving from the plan more or
18 less than he or she would have been entitled to receive had the
19 records been correct, the retirement board shall correct the error.
20 If correction of the error occurs after the effective retirement
21 date of a retirant, and as far as is practicable, the retirement
22 board shall adjust the payment of the benefit in a manner that the
23 actuarial equivalent of the benefit to which the retirant was
24 correctly entitled shall be paid.

1 (b) Underpayments: Any error resulting in an underpayment to
2 the retirement system of required contributions may be corrected by
3 the member or retirant remitting the required member contribution
4 and the employer remitting the required employer contribution.
5 Interest shall accumulate in accordance with the Legislative Rule
6 162 CSR 7 concerning retirement board refund, reinstatement,
7 retroactive service, loan and employer error interest factors and
8 any accumulating interest owed on the member and employer
9 contributions resulting from an employer error shall be the
10 responsibility of the employer. The employer may remit total
11 payment and the member reimburse the employer through payroll
12 deduction over a period equivalent to the time period during which
13 the employer error occurred. If the correction of an error
14 involving an underpayment of required contributions to the
15 retirement system will result in increased payments to a retirant,
16 including increases to payments already made, any adjustments shall
17 be made only after the retirement board receives full payment of
18 all required member and employer contributions, including interest.

19 (c) Overpayments: (1) When mistaken or excess employer
20 contributions, including any overpayments, have been made to the
21 retirement system by an employer, due to error or other reason, the
22 retirement board shall credit the employer with an amount equal to
23 the erroneous contributions, to be offset against the employer's
24 future liability for employer contributions to the retirement

1 system. Earnings or interest shall not be credited to the employer.

2 (2) When mistaken or excess member contributions, including
3 any overpayments, have been made to the retirement system, due to
4 error or other reason, the retirement board shall have sole
5 authority for determining the means of return, offset or credit to
6 or for the benefit of the member of the amounts, and may use any
7 means authorized or permitted under the provisions of Section
8 401(a), et seq. of the Internal Revenue Code and guidance issued
9 thereunder applicable to governmental plans. Alternatively, in its
10 full and complete discretion, the retirement board may require the
11 employer to pay the member the amounts as wages, with the
12 retirement board crediting the employer with a corresponding amount
13 to offset against its future contributions to the retirement
14 system: *Provided*, That the wages paid to the member shall not be
15 considered compensation for any purposes under this article.
16 Earnings or interest shall not be returned, offset, or credited
17 under any of the means used by the retirement board for returning
18 mistaken or excess member contributions, including any
19 overpayments, to a member.

20 **§18-7A-17. Statement and computation of teachers' service;**
21 **qualified military service.**

22 (a) Under rules adopted by the retirement board, each teacher
23 and nonteaching member shall file a detailed statement of his or
24 her length of service as a teacher or nonteacher for which he or

1 she claims credit. The Retirement Board shall determine what part
2 of a year is the equivalent of a year of service. In computing the
3 service, however, it shall credit no period of more than a month's
4 duration during which a member was absent without pay, nor shall it
5 credit for more than one year of service performed in any calendar
6 year.

7 (b) For the purpose of this article, the retirement board
8 shall grant prior service credit to members of the retirement
9 system who were honorably discharged from active duty service in
10 any of the Armed Forces of the United States in any period of
11 national emergency within which a federal Selective Service Act was
12 in effect. For purposes of this section, "Armed Forces" includes
13 Women's Army Corps, women's appointed volunteers for emergency
14 service, Army Nurse Corps, SPARS, Women's Reserve and other similar
15 units officially parts of the military service of the United
16 States. The military service is considered equivalent to public
17 school teaching, and the salary equivalent for each year of that
18 service is the actual salary of the member as a teacher for his or
19 her first year of teaching after discharge from military service.
20 Prior service credit for military service shall not exceed ten
21 years for any one member, nor shall it exceed twenty-five percent
22 of total service at the time of retirement. Notwithstanding the
23 preceding provisions of this subsection, contributions, benefits
24 and service credit with respect to qualified military service shall

1 be provided in accordance with Section 414(u) of the Internal
2 Revenue Code. For purposes of this section, "qualified military
3 service" has the same meaning as in Section 414(u) of the Internal
4 Revenue Code. The Retirement Board is authorized to determine all
5 questions and make all decisions relating to this section and,
6 pursuant to the authority granted to the retirement board in
7 section one, article ten-d, chapter five of this code, may
8 promulgate rules relating to contributions, benefits and service
9 credit to comply with Section 414(u) of the Internal Revenue Code.
10 No military service credit may be used in more than one retirement
11 system administered by the Consolidated Public Retirement Board.

12 (c) For service as a teacher in the employment of the federal
13 government, or a state or territory of the United States, or a
14 governmental subdivision of that state or territory, the retirement
15 board shall grant credit to the member: *Provided*, That the member
16 shall pay to the system twelve percent of that member's gross
17 salary earned during the first full year of current employment
18 whether a member of the Teachers' Retirement System or the
19 Teachers' Defined Contribution Retirement System, times the number
20 of years for which credit is granted, plus interest at a rate to be
21 determined by the retirement board. The interest shall be deposited
22 in the reserve fund and service credit granted at the time of
23 retirement shall not exceed the lesser of ten years or fifty
24 percent of the member's total service as a teacher in West

1 Virginia. Any purchase of out-of-state service, as provided in this
2 article, shall not be used to establish eligibility for a
3 retirement allowance and the retirement board shall grant credit
4 for the purchased service as additional service only: *Provided,*
5 *however,* That a purchase of out-of-state service is prohibited if
6 the service is used to obtain a retirement benefit from another
7 retirement system: *Provided further,* That salaries paid to members
8 for service prior to entrance into the retirement system shall not
9 be used to compute the average final salary of the member under the
10 retirement system.

11

12 (d) No members shall be considered absent from service while
13 serving as a member or employee of the Legislature of the State of
14 West Virginia during any duly constituted session of that body or
15 while serving as an elected member of a county commission during
16 any duly constituted session of that body.

17 (e) No member shall be considered absent from service as a
18 teacher or nonteacher while serving as an officer with a statewide
19 professional teaching association, or who has served in that
20 capacity, and no retirant, who served in that capacity while a
21 member, shall be considered to have been absent from service as a
22 teacher by reason of that service: *Provided,* That the period of
23 service credit granted for that service shall not exceed ten years:
24 *Provided, however,* That a member or retirant who is serving or has

1 served as an officer of a statewide professional teaching
2 association shall make deposits to the Teachers Retirement System,
3 for the time of any absence, in an amount double the amount which
4 he or she would have contributed in his or her regular assignment
5 for a like period of time.

6 (f) The Teachers Retirement System shall grant service credit
7 to any former or present member of the West Virginia Public
8 Employees Retirement System who has been a contributing member of
9 the Teachers' Retirement System for more than three years, for
10 service previously credited by the Public Employees Retirement
11 System upon his or her written request and: (1) Shall require the
12 transfer of the member's Public Employees Retirement System
13 accumulated contributions to the Teachers Retirement System; or (2)
14 shall require a repayment of the amount withdrawn from the Public
15 Employees Retirement System, plus interest at a rate to be
16 determined by the retirement board, compounded annually from the
17 date of withdrawal to the date of payment, any time prior to the
18 member's effective retirement date: *Provided*, That there shall be
19 added by the member to the amounts transferred or repaid under this
20 subsection an amount which shall be sufficient to equal the
21 contributions he or she would have made had the member been under
22 the Teachers Retirement System during the period of his or her
23 membership in the Public Employees Retirement System. All interest
24 paid or transferred shall be deposited in the reserve fund.

1 (g) For service as a teacher in an elementary or secondary
2 parochial school, located within this state and fully accredited by
3 the West Virginia Department of Education, the retirement board
4 shall grant credit to the member: *Provided*, That the member shall
5 pay to the system twelve percent of that member's gross salary
6 earned during the first full year of current employment whether a
7 member of the Teachers' Retirement System or the Teachers' Defined
8 Contribution Retirement System, times the number of years for which
9 credit is granted, plus interest at a rate to be determined by the
10 retirement board. The interest shall be deposited in the reserve
11 fund and service granted at the time of retirement shall not exceed
12 the lesser of ten years or fifty percent of the member's total
13 service as a teacher in the West Virginia public school system. Any
14 transfer of parochial school service, as provided in this section,
15 may not be used to establish eligibility for a retirement allowance
16 and retirement board shall grant credit for the transfer as
17 additional service only: *Provided, however*, That a transfer of
18 parochial school service is prohibited if the service is used to
19 obtain a retirement benefit from another retirement system.

20 (h) Active members who previously worked in CETA
21 (Comprehensive Employment and Training Act) may receive service
22 credit for time served in that capacity: *Provided*, That in order to
23 receive service credit under the provisions of this subsection the
24 following conditions must be met: (1) The member must have moved

1 from temporary employment with the participating employer to
2 permanent full-time employment with the participating employer
3 within one hundred twenty days following the termination of the
4 member's CETA employment; (2) the retirement board must receive
5 evidence that establishes to a reasonable degree of certainty as
6 determined by the retirement board that the member previously
7 worked in CETA; and (3) the member shall pay to the retirement
8 board an amount equal to the employer and employee contribution
9 plus interest at the amount set by the retirement board for the
10 amount of service credit sought pursuant to this subsection:
11 *Provided, however,* That the maximum service credit that may be
12 obtained under the provisions of this subsection is two years:
13 *Provided further,* That a member must apply and pay for the service
14 credit allowed under this subsection and provide all necessary
15 documentation by March 31, 2003: *And provided further,* That the
16 retirement board shall exercise due diligence to notify affected
17 employees of the provisions of this subsection.

18 (i) If a member is not eligible for prior service credit or
19 pension as provided in this article, then his or her prior service
20 shall not be considered a part of his or her total service.

21 (j) A member who withdrew from membership may regain his or
22 her former membership rights as specified in section thirteen of
23 this article only in case he or she has served two years since his
24 or her last withdrawal.

1 (k) Subject to the provisions of subsections (a) through (l),
2 inclusive, of this section, the retirement board shall verify as
3 soon as practicable the statements of service submitted. The
4 retirement board shall issue prior service certificates to all
5 persons eligible for the certificates under the provisions of this
6 article. The certificates shall state the length of the prior
7 service credit, but in no case shall the prior service credit
8 exceed forty years.

9 (l) Notwithstanding any provision of this article to the
10 contrary, when a member is or has been elected to serve as a member
11 of the Legislature, and the proper discharge of his or her duties
12 of public office require that member to be absent from his or her
13 teaching or administrative duties, the time served in discharge of
14 his or her duties of the legislative office are credited as time
15 served for purposes of computing service credit: *Provided*, That the
16 retirement board may not require any additional contributions from
17 that member in order for the retirement board to credit him or her
18 with the contributing service credit earned while discharging
19 official legislative duties: *Provided, however*, That nothing in
20 this section may be construed to relieve the employer from making
21 the employer contribution at the member's regular salary rate or
22 rate of pay from that employer on the contributing service credit
23 earned while the member is discharging his or her official
24 legislative duties. These employer payments shall commence as of

1 June 1,2000: *Provided further,* That any member to which the
2 provisions of this subsection apply may elect to pay to the
3 retirement board an amount equal to what his or her contribution
4 would have been for those periods of time he or she was serving in
5 the Legislature. The periods of time upon which the member paid his
6 or her contribution shall then be included for purposes of
7 determining his or her final average salary as well as for
8 determining years of service: *And provided further,* That a member
9 using the provisions of this subsection is not required to pay
10 interest on any contributions he or she may decide to make.

11 (m) The Teachers Retirement System shall grant service credit
12 to any former member of the State Police Death, Disability and
13 Retirement System who has been a contributing member for more than
14 three years, for service previously credited by the State Police
15 Death, Disability and Retirement System; and: (1) Shall require the
16 transfer of the member's contributions to the Teachers Retirement
17 System; or (2) shall require a repayment of the amount withdrawn
18 any time prior to the member's retirement: *Provided,* That the
19 member shall add to the amounts transferred or repaid under this
20 paragraph an amount which is sufficient to equal the contributions
21 he or she would have made had the member been under the Teachers
22 Retirement System during the period of his or her membership in the
23 State Police Death, Disability and Retirement System plus interest
24 at a rate to be determined by the retirement board compounded

1 annually from the date of withdrawal to the date of payment. The
2 interest paid shall be deposited in the reserve fund.

3 **§18-7A-23. Withdrawal and death benefits.**

4 (a) Benefits upon withdrawal from service prior to retirement
5 under the provisions of this article shall be as follows:

6 (1) A contributor who withdraws from service for any cause
7 other than death, disability or retirement shall, upon application,
8 be paid his or her accumulated contributions up to the end of the
9 fiscal year preceding the year in which application is made, after
10 offset of any outstanding loan balance, plus accrued loan interest,
11 pursuant to section thirty-four of this article, but in no event
12 shall interest be paid beyond the end of five years following the
13 year in which the last contribution was made: *Provided*, That the
14 contributor, at the time of application, is then no longer under
15 contract, verbal or otherwise, to serve as a teacher; or

16 (2) If the inactive member has completed twenty years of total
17 service, he or she may elect to receive at age sixty an annuity
18 which shall be computed as provided in this article: *Provided*, That
19 if the inactive member has completed at least five, but fewer than
20 twenty, years of total service in this state, he or she may elect
21 to receive at age sixty-two an annuity which shall be computed as
22 provided in this article. The inactive member must notify the
23 retirement board in writing concerning the election. If the
24 inactive member has completed fewer than five years of service in

1 this state, he or she shall be subject to the provisions as
2 outlined in subdivision (1) of this subsection.

3 (b) Benefits upon the death of a contributor prior to
4 retirement under the provisions of this article shall be paid as
5 follows:

6 (1) If the contributor was at least fifty years old and if his
7 or her total service as a teacher or nonteaching member was at
8 least twenty-five years at the time of his or her death, then the
9 surviving spouse of the deceased, provided the spouse is designated
10 as the sole primary refund beneficiary, is eligible for an annuity
11 computed as though the deceased were actually a retirant at the
12 time of death and had selected a survivorship option which pays the
13 spouse the same monthly amount which would have been received by
14 the deceased; or

15 (2) If the facts do not permit payment under subdivision (1)
16 of this subsection, then the following sum shall be paid to the
17 refund beneficiary of the contributor: (A) The contributor's
18 accumulated contributions up to the plan year of his or her death
19 plus an amount equal to his or her member contributions. *Provided,*
20 That the latter sum shall emanate from the Employer's Accumulation
21 Fund; and (B) the refund beneficiary of any individual who became
22 a member of the retirement system as a result of the voluntary
23 transfer contemplated in article seven-d of this chapter shall also
24 be paid the member contributions plus the vested portion of

1 employer contributions made on his or her behalf to the Teachers'
2 Defined Contribution Retirement System, plus any earnings thereon,
3 as of June 30, 2008, as stated by the retirement board.

4 **§18-7A-25. Eligibility for retirement allowance.**

5 (a) Any actively contributing member who has attained the age
6 of sixty years or any member who has thirty-five years of total
7 service as a teacher or nonteaching member in West Virginia,
8 regardless of age, is eligible for an annuity. No new entrant nor
9 present member is eligible for an annuity, however, if either has
10 less than five years of service to his or her credit: *Provided,*
11 That on and after July 1, 2013, any person who becomes a new member
12 of this retirement system shall, in qualifying for retirement under
13 this section, have five or more years of contributory service, all
14 of which shall be actual, contributory ones.

15 (b) Any member who has attained the age of fifty-five years
16 and who has served thirty years as a teacher or nonteaching member
17 in West Virginia is eligible for an annuity.

18 (c) Any member who has served at least thirty but less than
19 thirty-five years as a teacher or nonteaching member in West
20 Virginia and is less than fifty-five years of age is eligible for
21 an annuity, but the annuity shall be the reduced actuarial
22 equivalent of the annuity the member would have received if the
23 member were age fifty-five at the time such annuity was applied
24 for.

1 (d) The request for any annuity shall be made by the member in
2 writing to the retirement board, but in case of retirement for
3 disability, the written request may be made by either the member or
4 the employer.

5 (e) A member is eligible for annuity for disability if he or
6 she satisfies the conditions in either subdivision (1) or (2) of
7 this subsection and meets the conditions of subdivision (3) of this
8 subsection as follows:

9 (1) His or her service as a teacher or nonteaching member in
10 West Virginia must total at least ten years and service as a
11 teacher or nonteaching member must have been terminated because of
12 disability, which disability must have caused absence from service
13 for at least six months before his or her application for
14 disability annuity is approved.

15 (2) His or her service as a teacher or nonteaching member in
16 West Virginia must total at least five years and service as a
17 teacher or nonteaching member must have been terminated because of
18 disability, which disability must have caused absence from service
19 for at least six months before his or her application for
20 disability annuity is approved and the disability is a direct and
21 total result of an act of student violence directed toward the
22 member.

23 (3) An examination by a physician or physicians selected by
24 the retirement board must show that the member is at the time

1 mentally or physically incapacitated for service as a teacher or
2 nonteaching member, that for that service the disability is total
3 and likely to be permanent and that he or she should be retired in
4 consequence of the disability.

5 (f) Continuance of the disability of the retirant shall be
6 established by medical examination, as prescribed in subdivision
7 (3), subsection (e) of this section, annually for five years after
8 retirement, and thereafter at such times required by the retirement
9 board. Effective July 1,1998, a member who has retired because of
10 a disability may select an option of payment under the provisions
11 of section twenty-eight of this article: *Provided*, That any option
12 selected under the provisions of section twenty-eight of this
13 article shall be in all respects the actuarial equivalent of the
14 straight life annuity benefit the disability retirant receives or
15 would receive if the options under said section were not available
16 and that no beneficiary or beneficiaries of the disability retirant
17 may receive a greater benefit, nor receive any benefit for a
18 greater length of time, than the beneficiary or beneficiaries would
19 have received had the disability retirant not made any election of
20 the options available under said section. In determining the
21 actuarial equivalence, the retirement board shall take into account
22 the life expectancies of the member and the beneficiary: *Provided*,
23 *however*, That the life expectancies may at the discretion of the
24 retirement board be established by an underwriting medical director

1 of a competent insurance company offering annuities. Payment of the
2 disability annuity provided in this article shall cease immediately
3 if the retirement board finds that the disability of the retirant
4 no longer exists, or if the retirant refuses to submit to medical
5 examination as required by this section.

6 **§18-7A-26. Computation of annuities.**

7 (a) Retirants whose annuities were approved by the retirement
8 board effective before July 1, 1980, shall be paid the annuities
9 which were approved by the retirement board.

10 (b) Annuities approved by the retirement board effective after
11 June 30, 1980, shall be computed as provided in this section.

12 (c) Upon establishment of eligibility for a retirement
13 allowance, a member shall be granted an annuity which shall be two
14 percent of the member's average salary multiplied by his or her
15 total service credit, subject to reduction if necessary to comply
16 with the maximum benefit provisions of Section 415 of the Internal
17 Revenue Code and section twenty-eight-a of this article.

18 In this subsection "average salary" means the average of the
19 highest annual salaries received by the member during any five plan
20 years contained within his or her last fifteen years of total
21 service credit: *Provided*, That the highest annual salary used in
22 this calculation for certain members employed by the West Virginia
23 Higher Education Policy Commission under its control shall be
24 \$4,800, as provided by section fourteen-a of this article.

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2 (d) The disability annuities of all disabled retirants shall
3 be based upon a disability table prepared by a competent actuary
4 approved by the retirement board. Disability annuity benefits will
5 begin the first day of the month following the latter of: (1) Six
6 months of absence caused by said disability; (2) date of written
7 report by physician selected by retirement board stating member is
8 mentally or physically incapacitated for service and that
9 disability is total and likely to be permanent; and (3) termination
10 of employment.

11 (e) Upon the death of a retirant who qualified for an annuity
12 as the surviving spouse of an active member or because of permanent
13 disability, the estate of the deceased or beneficiary designated
14 for such purpose shall be paid the difference, if any, between the
15 member's contributions with regular interest thereon, and the sum
16 of the annuity payments. Upon the death of a spouse who was named
17 as the member's survivor, a retirant may elect an annuity option
18 approved by the retirement board in an amount adjusted on a fair
19 basis to be of equal actuarial value as the annuity prospectively
20 in effect relative to the surviving member at the time the new
21 option is elected.

22 (f) All annuities shall be paid in twelve monthly payments. In
23 computing the monthly payments, fractions of a cent shall be
24 considered a cent. The monthly payments shall cease with the

1 payment for the month within which the beneficiary dies, and shall
2 begin with the payment for the month succeeding the month within
3 which the retirant became eligible under this article for the
4 annuity granted; in no case, however, shall a retirant receive more
5 than four monthly payments which are retroactive after the
6 retirement board receives his or her application for annuity. The
7 monthly payments shall be made on the twenty-fifth day of each
8 month, except the month of December, when the payment shall be made
9 on December 18. If the date of payment falls on a holiday, Saturday
10 or Sunday, then the payment shall be made on the preceding workday.

11 (g) In case the retirement board receives data affecting the
12 approved annuity of a retirant, the annuity shall be changed in
13 accordance with the data, the change being effective with the
14 payment for the month within which the retirement board received
15 the new data.

16 (h) Any person who has attained the age of sixty-five and who
17 has served at least twenty-five years as a teacher or nonteacher
18 prior to July 1, 1941, is eligible for prior service credit and for
19 prior service pensions as prescribed in this section.